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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Telecommunications Act of 1996	)	CC Docket No. 96-193
	)	
Reform of Filing Requirements and Carrier Classifications	)	

DOCKET FILE COPY ORIGINAL

COMMENTS OF BELLSOUTH

BellSouth Corporation and BellSouth Telecommunications Inc. ("BellSouth") hereby comment on the Order and Notice of Proposed Rulemaking, FCC 96-370, ("Notice") released September 12, 1996, in the captioned proceeding. The Notice proposes changes in the Commission rules necessary to implement Section 402(b)(2)(B) of the Telecommunications Act of 1996, which permits any common carrier "to file cost allocation manuals and ARMIS reports annually, to the extent that such carrier is required to file such manuals or reports."

As demonstrated below, the Commission should eliminate the requirement that price cap local exchange carriers ("LECs") file cost allocation manuals ("CAMs"). If the Commission does not eliminate the CAM filing requirement for price cap LECs, it should eliminate the sixty day advance notice requirement for certain cost allocation manual revisions. Finally, if the Commission does not take one of the steps proposed above, it should recognize that annual CAMs required to be filed sixty days in advance of their effective date will be filed on October 31, not on the last day of the calendar year. Only by permitting such filings can the Commission comply with the statutory requirement that LECs only be required to file a single CAM revision each year.

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List A B C D E

I. The Commission should eliminate the CAM filing requirement for price cap LECs.

In a companion docket, the *Accounting Safeguards Proceeding*,[1] the Commission is considering the accounting rules needed to implement the 1996 Act. In that proceeding, BellSouth recommended the elimination of cost allocation and affiliate transaction rules for price cap LECs. BellSouth demonstrated that the existing cost allocation rules are not necessary to protect the public interest. Such rules do not allocate overhead costs in the way that competitive markets recover such costs, and the difference between market rates and rates set on the basis of accounting costs represent lost efficiency and reduced productivity. Since price cap rates are no longer based on accounting costs, price cap carriers have the incentive to adopt prices that are economically efficient. They have neither the incentive nor the ability to misallocate costs or cross-subsidize nonregulated services with revenues from regulated services.[2]

As recognized in the Notice, the cost allocation rules and the CAM filing requirements were adopted in a rate-of-return environment to protect customers of regulated telephone services from being charged prices that are too high because the costs and risks of nonregulated activities have been shifted to such customers.[3] In a price cap environment, such rules are unnecessary and are, in fact, counter productive, since they reduce carrier productivity and efficiency with no countervailing public benefits. Price cap carriers cannot "shift" unregulated costs to customers of

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[1] In the Matter of Implementation of the Telecommunications Act of 1996 - Accounting Safeguards Under the Telecommunications Act of 1996, CC Docket No. 96-150, Notice of Proposed Rulemaking, FCC 96-309, released July 18, 1996 ("*Accounting Safeguards Proceeding*").

[2] *Accounting Safeguards Proceeding*, Comments of BellSouth, pgs. 3-8 (August 26, 1996). BellSouth hereby incorporates its comments in Docket 96-150 by reference.

[3] Notice, para. 21, fn. 60.

regulated services, since the regulated prices charged by such carriers are no longer based on current accounting costs.[4]

In a discussion in another docket of the inefficiencies and market distortions caused by regulatory cost allocations, Dr. Alfred E. Kahn recently recommended to the Commission:

> 45. The ultimate irony is that all this administrative managing, with the irresistible temptation it creates for biasing the results of the free market, is unnecessary. The market knows how to encourage efficient investment and discourage inefficient ones. It does so by establishing the two conditions I have already expounded: investors bear the entire additional costs and reap the full benefits; and purchasers of the regulated services bear *none* of those additional costs and receive *none* of the benefit--which requires only that regulatory agencies leave the rates for regulated services, however set, unchanged by these new ventures.
>
> 46. How do we establish those necessary conditions? The simple answer is by the Commission *getting out of the way*; leaving the decisions to investors, on the one side, and purchasers of the new services, on the other. This means the Commission should *stop allocating* the costs of these multi-purpose facilities and *not change the price of regulated services*--up or down--in response to them. *That* is the way to see that purchasers of the regulated services are neither burdened nor benefited by them--which, as we have seen, is another way of saying that this is the way to put on the companies the entire burden of the additional costs to weigh against all of the anticipated benefits. Neither of these rules leaves any room for cost allocation, and it is high time that the Commission give that practice the indecent burial it deserves. The ultimate message to the Commission is: call off this cost allocation rulemaking and let the market do the job, as the law instructs it to do.[5]

Section 10 of the Communications Act requires the Commission to eliminate unnecessary regulation. Section 402(b)(2)(B) of the 1996 Act requires CAM filings only "to the extent such

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[4] BellSouth has repeatedly recommended that the Commission eliminate "sharing", a vestige of cost-of-service regulation, from the LEC price cap plan. Even with "sharing", however, the connection between current management decisions and future prices is so tenuous as to eliminate any real concern that management will make inefficient decisions in an attempt to influence future price caps.

[5] In the Matter of Allocation of Costs Associated with Local Exchange Carrier Provision of Video Programming Services, CC Docket No. 96-112, Declaration of Alfred E. Kahn, July 12, 1996, pgs. 26-27 (Emphasis in the original)

carrier is required to file such manuals". Congress has clearly imposed on the Commission the duty to evaluate its current rules and eliminate those not necessary to protect the public interest. The cost allocation and affiliate transaction rules, and the CAM requirement that helps implement those rules, should be eliminated.

II. The Commission should eliminate the sixty day advance notice requirement.

In the Notice, the Commission proposes to retain the sixty day advance notice requirement for changes in the cost apportionment table or the description of time reporting procedures in the CAM.[6] BellSouth believes that the sixty day advance notice requirement must be eliminated because it is inconsistent with the requirement of Section 402(b)(2)(B) of the 1996 Act that the Commission permit any common carrier to file CAMs "annually".

The Commission must recognize that the role of the CAM will change as a result of the adoption of Section 402(b)(2)(B). With the elimination of quarterly updates, neither the Commission nor other interested parties can reasonably expect the CAM to reflect current carrier operations. Instead, the CAM will necessarily reflect the carrier's operations only as of the time of the annual filing. Nor is it reasonable for the Commission or other interested parties to assume that cost pools and time reporting procedures will be changed only at the time of the annual filing. In the competitive market fostered by the 1996 Act, carriers will be required to make more frequent adjustments to their operations than in the past.

In addition, BellSouth will be placed at a competitive disadvantage if it is forced to provide sixty day public notice of both the nature and financial quantification of cost apportionment changes necessary for new products or services. In essence, this gives competitors

[6] Notice, para. 21; Appendix C, proposed revision to § 64.903(b).

a minimum two month head start in competing with the new BellSouth product or service. Such an unearned competitive advantage is totally inconsistent with the pro-competitive, as opposed to pro-competitor, intent of the 1996 Act.

The Commission should not adopt its alternate proposal to require carriers to seek a waiver before implementing changes to the CAM as filed. Such a procedure is a waste of resources for both the carrier and the Commission. Unless the Commission is willing to devote substantial resources to processing waiver requests, the alternate proposal would not result in the carriers' CAM reflecting current operations.[7] In any event, the alternate proposal is inconsistent with Section 402(b)(2)(B) in that it would require carriers to update their CAMs more frequently than annually.

III. The Commission should recognize that annual CAM filings reflecting the sixty day notice requirement will be filed on October 31.

If the Commission does not eliminate the sixty day notice requirement discussed above, it must recognize that annual CAM updates containing changes in the cost apportionment tables or time reporting procedures will be filed on October 31 to allow sixty days prior to the effective date of the revisions on January 1.[8] This does not require a change in the proposed rule, which permits annual CAM updates to "be filed on or before the last working day of each calendar

[7]The delays involved in the waiver process can be substantial. On June 29, 1993, BellSouth filed a petition for a waiver of the Commission's requirement that CAMs contain uniform language describing the cost methodology employed. The filing was at the invitation of the Commission, and was not opposed. Nevertheless, the Commission has not yet ruled on the BellSouth waiver petition. See In the Matter of Local Exchange Carrier's Permanent Cost Allocation Manuals for the Separation of Regulated and Nonregulated Costs, AAD Nos. 92-22 through 92-35, BellSouth Petition for Waiver, filed June 29, 1993.

[8] RAO Letter 19 requires certain administrative changes be submitted by December 31 of each year. To comply with both the sixty day advance notice requirement and the requirements of RAO 19, the annual CAM filing would be made on October 31.

year."[9] If the Commission removes the sixty day advance notice requirement, as recommended by BellSouth, this issue will be rendered moot.

Respectfully submitted,

BELLSOUTH CORPORATION and
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[9] Notice, Appendix C, proposed revisions to Section 64.903(b). This language is inconsistent with the statement in Paragraph 6 of the Notice that: "Carriers are now required to file their annual updates on the last working day of each year."

CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of October, 1996, serviced all parties to this action with the foregoing COMMENTS reference to CC Docket No. 96-193, by hand service as set forth on the attached service list.

Julia W. Spires

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